

Daily News

EPA Pact To Develop California Water Criteria Escalates Selenium Debate

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Environmentalists and EPA have agreed to court-enforceable deadlines for the agency to propose selenium and mercury water quality criteria for California, escalating an existing debate over whether federal selenium criteria should include fish-tissue concentrations to better protect species.

The U.S. District Court for the Northern District of California Aug. 25 [entered a consent degree](#) between two environmental groups, Our Children's Earth Foundation (OCE) and Ecological Rights Foundation (ERF), and EPA that requires the agency to propose selenium criteria by Nov. 30, 2016, and propose mercury criteria by June 30, 2017.

In both instances, EPA will conduct Endangered Species Act (ESA) consultations with the U.S. Fish & Wildlife Service (FWS) and National Marine Fisheries Service within nine months of the proposal and finalize the criteria within six months of concluding the consultation or determining the criteria will have no effect on any listed species or their habitat.

FWS "determined over fifteen years ago that EPA's existing standards for selenium and mercury were too lenient to protect wildlife, particularly endangered birds and fish, but EPA failed to act until it faced added pressure from OCE and ERF's citizen suit," the groups' attorney, Christopher Sproul, said in an Aug. 27 statement. "This settlement represents a major victory for public health and coastal environments throughout California."

The agreement comes as FWS recently told EPA in July 28 comments on national draft water quality criteria for selenium that while the agency's latest approach is an improvement over its failed 2004 plan, the latest proposal may not adequately protect some fish and non-fish species, may be difficult to implement and the agency may lack critical data.

And a federal court in Kentucky earlier this month [backed environmentalists' request](#) to expand litigation challenging EPA's approval of new fish-tissue-based water quality standard in that state -- a test case of the proposed national criteria.

The move will allow environmentalists to include charges that EPA failed to complete ESA section 7 consultation with FWS before approving new standards for selenium and revised limits for nutrients.

The agency's current selenium criteria, first adopted in 1987, set traditional water column concentration values of 5 micrograms per liter (ug/L) for chronic exposures and 20 ug/L for acute exposures. But dischargers have long struggled to meet standards and limits based on the 1987 criteria, resulting in scores of citizen suits.

Now the Obama administration is seeking to adopt a new approach that includes both a fish-tissue measure as well as water column screening values, although the agency says the tissue element should be "given precedence" when both types of data are available.

Industry and state groups have mostly welcomed the draft selenium criteria, having long pushed for the use of fish-tissue concentrations to assess threats to aquatic life. But environmentalists say these limits are not strict enough to protect the aquatic life for which the criteria were developed.